IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Bharat Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.162/2004)

2.Vishal & Others Vs. State of Rajasthan
(S.B. CRIMINAL JAIL APPEAL NO.1400/2003)

3. Mukesh Vs. State of Rajasthan
(S.B. CRIMINAL JAIL APPEAL NO.1445/2003)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 24-9-2003 in Sessions Case No.29/2003 (33/2003) passed by Smt. Kamal Dutt, RHJS, Additional Sessions Judge (Fast Track) Alwar.

Date of Judgment: May 24, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. B.M.Singh] for the appellants.
Mr. S.S.Sunda]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in these appeals is to the judgment dated September 24, 2003 of learned Additional Sessions Judge (Fast Track) Alwar whereby the appellants, five in number, were convicted and sentenced as under:-

Appellant Bharat:
U/s.307 IPC:
To suffer rigorous imprisonment for seven years and fine of Rs.3000/-, in default to further suffer rigorous imprisonment for one year.

Appellants Mukesh, Vishal, Leader @ Kalu and Ajay @ Ganja:

U/s.307/149 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs.1500/-, in default to further suffer rigorous imprisonment for six months.

Appellants Bharat, Mukesh, Vishal, Leader @ Kalu and Ajay @ Ganja :

U/s.148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for three months.

U/s.323 IPC:

Each to suffer rigorous imprisonment for one year.

U/s.341 IPC:

Each to suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Bhima Ram (Pw.1) submitted a written report (Ex.P-1) at Police Station Kotwali Alwar on September 22, 2002 at 1.00 PM to the effect that on the said day around 11 AM his son Jag Mohan was sitting at his shop of Sweets meanwhile Mukesh, Bharat, Vishal, Leader @ Kalu, Nanga and 8-10 others came armed with Sword, lathi, Pharsi and Rod and attacked on Jag Mohan. Bharat inflicted sword blow on head of Jag Mohan, as a result of which he fell down and others gave blows with Lathi, Rod and Pharsi. When informant tried to intervene Lathi blow was inflicted on his waist. On that report case was registered under sections 147, 323, 451, 148 and 307 IPC and investigation commenced and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Alwar. Charges under sections 148, 307, 307/149 323 and 341 IPC were framed. The appellants denied the

charges and claimed trial. The prosecution in support of its case examined as many as 17 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Appellant Mukesh stated that while he was going to his house he was beaten up in the way, 3-4 Pharsi-blows were inflicted, hot milk was poured and he sustained fracture of leg. He remained under treatment for 10-15 days at SMS Hospital Jaipur. Two witnesses were examined in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard learned counsel for the appellants and learned Public Prosecutor and weighed the material on record.

4. A look at the record demonstrates that Jag Mohan (Pw.3) vide injury report (Ex.P-16) sustained following injuries:-

1. Post operative bandage all over scalp.
2. Lacerated wound of size 6 x 1½ x bone deep on Lt.forearm ventrally irregular margins.
On X-ray part of bone of occipital region was found missing.

Injured Bhima Ram vide injury report (Ex.P-13) received two bruises on chest.

5. The prosecution case is founded on the testimony of Bhima Ram (Pw.1) and Jag Mohan (Pw.3). Conjoint reading of the statements of these witnesses reveals that the complainant party and accused party freely fought together and appellant Mukesh also sustained injuries. Babita wife of Mukesh lodged report bearing FIR No.447/2002 dated September 22, 2002 (Ex.D-7) and case under sections 147, 148, 149, 341 and 323 was registered

against Jag Mohan and Sita Ram at Police Station Kotwali Alwar. As per injury report Ex.D-9 appellant Mukesh received following injuries:-

1. Lt. leg & foot
2. Abrasion forearm.
3. Abrasion with diffuse swelling on nose
4. Bruise 6 x 2cm at Lt. shoulder
5. Stitched wound irregular size 6 x 4cm at ventex

On X-ray vide Ex.D-10 fractures of ulna and fibula were found.

6. Factual situation emerges from the material on record may be summarized thus:-

(i) It was complainant party who initiated the occurrence and gave beating to Mukesh.

(ii) The parties fought freely together.

(iii) Mukesh, member of accused party, sustained injuries.

(iv) Jag Mohan and Bhima Ram, members of complainant party, also sustained injuries.

7. The question that arises at this juncture is as to whether the offence committed by the appellants comes within the purview of attempt to commit murder or attempt to commit culpable homicide?

8. Section 308 IPC is `per verba et literis', the same as section 307 IPC, with the only difference that it relates to an attempt to commit culpable homicide whereas section 307 relates to an attempt to commit murder. Punishment under section 308 IPC as provided is consequently also less. In other respects the constituting element of the two sections are the same. The points requiring proof under section 308 IPC are:-

(1) That the accused did an act.
(2) That he did with -
(A) the intention of -
(a) causing such bodily injury as is likely to cause death, or
(b) causing death on -
(i) grave and sudden provocation not courted, or
(ii) in the exercise of the right of private defence which was, however, exceeded, or
(iii) believing in the lawful discharge of his public duty; or
(iv) by consent of the deceased; or
(B) the knowledge-
(a) that the act was likely to cause death.
To which may be added the following aggravating circumstance:
(3) That the act caused hurt to the person upon whom the attempt was made.

Illustration appended to section 308 IPC is as under:-
A, on grave and sudden provocation, fires a pistol at Z, under such circumstances, that if he thereby caused death he would by guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

9. Having closely scanned the material on record, I find that since Jagmohan initiated the occurrence by inflicting injuries on the person of Mukesh, appellant Bharat can be held liable for having committed offence of attempt to commit culpable homicide punishable under section 308 IPC.

10. In view of the peculiar facts and circumstances of the case it cannot be inferred that appellants Mukesh, Vishal, Leader @ Kalu and Ajay @ Ganja shared common intention to inflict injury on the person of Jag Mohan and Bhima Ram. Possibility of over implication of Mukesh, Vishal, Leader @ Kalu and Ajay @ Ganja in the case cannot be ruled out.

11. For these reasons, I dispose of instant appeals in the following terms:-

(i) Appeal of appellant Bharat stands partly allowed and instead of section 307, I convict him under section 308 IPC. Looking to the fact that Bharat has already undergone confinement for a period more than 4 years the ends of justice would be met in sentencing him to the period already undergone by him in confinement. I however acquit him of the charges under sections 148, 323 and 341 IPC. Appellant Bharat, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(ii) Appeals of appellants Mukesh, Vishal, Leader @ Kalu and Ajay @ Ganja stand allowed and they stand acquitted of the charges under sections 307/149, 148, 323 and 341 IPC. These appellants are on bail, they need not surrender and their bail bonds stand discharged.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

arn/